Supreme Court, U.S.
FILED
JAN 27 1972
E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19.....

No. 71-959

CALVIN THOMAS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AT CINCINNATI

DALE M. QUILLEN
308 Cavalier Building
95 White Bridge Road
Nashville, Tennessee 37205
Attorney for Petitioner

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

INDEX

Opinions Below 2
Jurisdiction 2
Questions Presented 2
Reason Why Certiorari Should Be Granted 2
Constitutional Provisions and Statutes Involved 2
Statement of the Case 3
Statement of Facts 3
Argument 4
Conclusion 5
Appendix A—Opinion, United States Court of Appeals for the 6th Circuit A1

Table of Cases

Clapp v. *State*, 30 S.W. 214, 94 Tenn. 186 5
Sherrill v. *State*, 321 S.W. 2d 811 4
United States of America v. *Thomas*, ... F. Supp. ..... (M.D. Tenn. 1971) 1
Weiler v. *U. S.*, 323 U.S. 606, 65 S.Ct. 548 4

Constitutional Provisions and Statutes

Constitution of the United States, Amendment V 2, 5
Corpus Juris Secundum, §810 (b_1) 4
Title 18, U.S.C., §752 3
Title 28, U.S.C., §1254 (1) 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19.....

No. .....

CALVIN THOMAS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AT CINCINNATI

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Calvin Thomas, defendant-appellant below, respectfully prays that a Writ of Certiorari issue to review the order entered against him on January 3, 1972 by the United States Court of Appeals for the Sixth Circuit in the case of *United States of America* v. *Calvin Thomas* (No. 71-1527), affirming the judgment of the United States District Court for the Middle District of Tennessee in *United States* v. *Thomas*, ... F. Supp. ..... (M.D. Tenn. 1971).

OPINIONS BELOW

There were no pretrial motions or orders in this case before the District Court. A copy of the Opinion of the United States Court of Appeals for the Sixth Circuit filed January 3, 1972, unreported, is printed in the Appendix hereto, *infra*, Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C §1254 (1).

QUESTIONS PRESENTED

1. Whether it is a violation of due process of law for a defendant in a Federal Criminal case to be convicted upon the uncorroborated testimony of an accomplice.

REASON WHY CERTIORARI SHOULD BE GRANTED

There is 180° difference between the view of this rule by the Federal Courts and many of the states and this rule is extremely prejudicial to defendants and a violation of the due process clause of the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States, Amendment V:

"No person shall be . . . deprived of life, liberty, or property, without due process of law; . . ."

STATEMENT OF THE CASE

An indictment was filed on November 18, 1970, charging petitioner, Calvin Thomas, with aiding and assisting the escape from the Metropolitan Jail, Nashville, Tennessee, of Johnny Pace, who had been arrested upon a warrant issued under the law of the United States. This was a one count indictment, charging the appellant with having violated Title 18, U.S.C., §752.

Trial was by jury and they found the appellant guilty and he was sentenced to four (4) years on the charge.

Appeal was perfected to the United States Court of Appeals for the Sixth Circuit and on January 3, 1972, the Court affirmed the conviction, whereupon petitioner seeks redress through the Writ of Certiorari.

STATEMENT OF FACTS

On or about September 12, 1970, Johnny Pace escaped from the Metropolitan Jail, Nashville, Tennessee, and at that time, he had been arrested upon a warrant issued under the laws of the United States and his custody was by virtue of an arrest on a felony charge.

The defendant herein, Calvin Thomas, was arrested and charged by an indictment filed on November 18, 1970, with a violation of Title 18, U.S.C., §752.

At the trial of this case, the Government's entire proof was built around the testimony of one Thaddeus Williams, who was an admitted accomplice to this offense. The other witnesses who testified for the Government consisted of people who in no way corroborated the testimony of Thaddeus Williams. The appellant, Calvin Thomas, testified and denied any participation whatsoever in the escape of Johnny Pace from the Metropolitan Jail.

ARGUMENT

The Court of Appeals in its decision (Appendix A1) did not consider the merits of the petitioner's attack on the long established Federal Rule that, upon a proper cautionary charge (petitioner admits such a charge), accomplice testimony may be sufficient without corroboration to uphold a criminal conviction.

This federal rule has come from the common law and is based upon the proposition that the ultimate measure of testimonial worth is quality and not quantity. *Weiler* v. *United States*, 323 U.S. 606, 65 S.Ct. 548.

The dangerous quality of the Rule is also well recognized in that Tennessee requires corroboration in order to convict. *Clapp* v. *State*, 30 S.W. 214, 94 Tenn. 186; *Sherrill* v. *State*, 321 S.W. 2d 811. Other states require corroboration by statute. See C.J.S., Criminal Law, §810(b$_1$), note 80 cases thereunder.

Petitioner respectfully contends that the framers of our Constitution intended to make it difficult to convict defendants and place them into prison, which is the very reason for the protective clauses inserted. A conviction for any crime ought not to rest on a mere "oath against an oath" situation. Even with cautionary instructions, a jury ought not to be allowed to find guilt beyond a reasonable doubt merely upon an evaluation of the credibility of the defendant or the alleged accomplice. Under such circumstances, a clever, well rehearsed "accomplice" would often be able to win the "battle of personalities" before the jury. Petitioner contends that it is a violation of the Due Process

Clause of the United States Constitution, as found in the Fifth Amendment.

The Court below claimed to have found "ample" corroboration of the testimony of Williams, the accomplice. They did not, however, set the same out and petitioner respectfully contends that a fair reading of the record will fail to reflect any such corroboration on any material point linking petitioner to the escape.

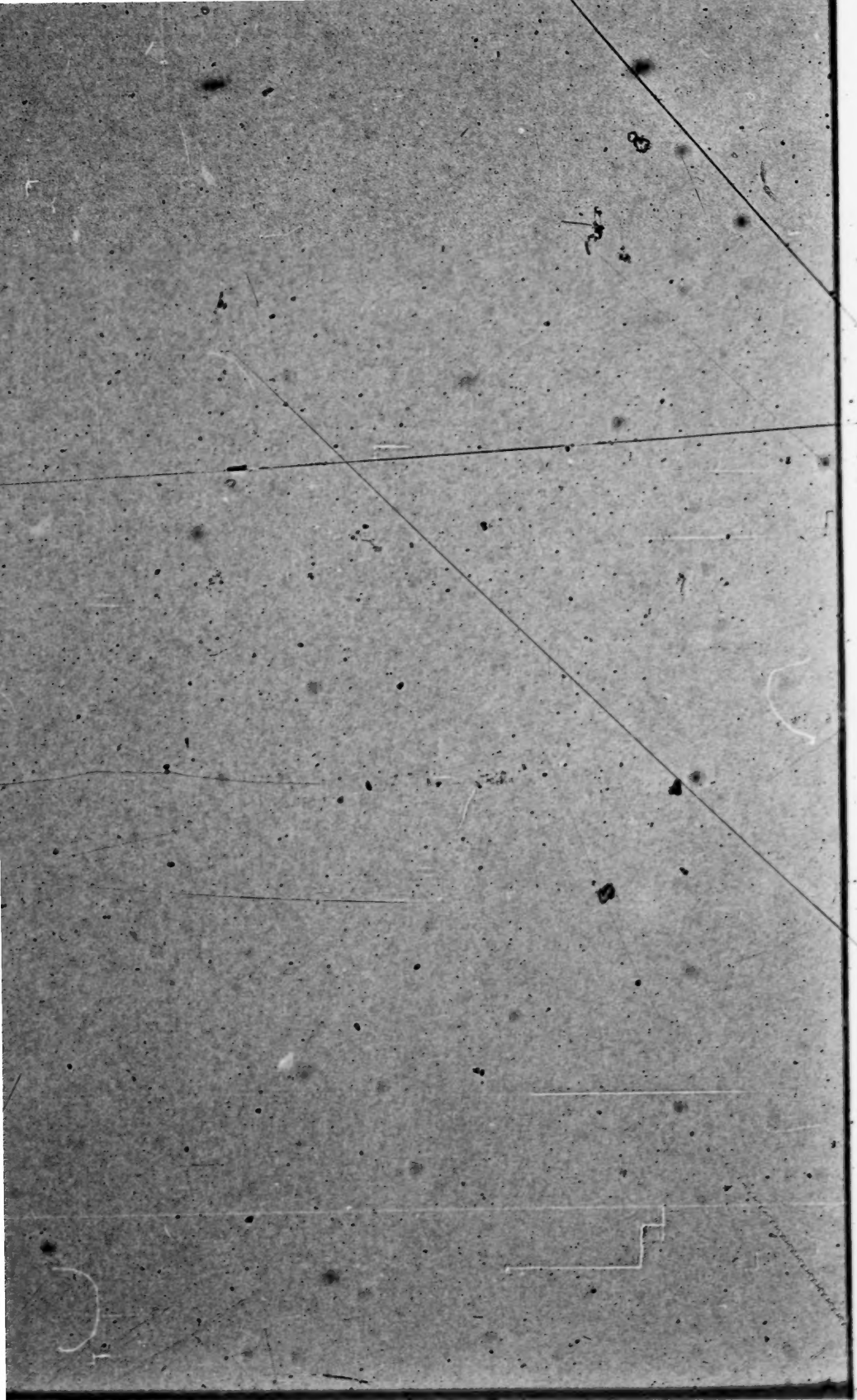
CONCLUSION

Wherefore, petitioner respectfully submits that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

DALE M. QUILLEN
Attorney for Petitioner Calvin Thomas

APPENDIX



APPENDIX A

No. 71-1527

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. CALVIN THOMAS, *Defendant-Appellant.*	APPEAL from the United States District Court for the Middle District of Tennessee, Nashville Division.

Decided and Filed January 3, 1972.

Before: EDWARDS, CELEBREZZE and MCCREE, Circuit Judges.

PER CURIAM. Appellant appeals from conviction after jury trial in the United States District Court for the Middle District of Tennessee (Nashville Division) on a charge of aiding and abetting the jail break of a federal prisoner, in violation of 18 U.S.C. § 752 (1970).

The single question presented is, "whether the trial court erred in overruling the defendant's motion for a directed verdict of acquittal because the entire case was predicated upon the uncorroborated evidence of an accomplice."

This question, if in fact presented by the record, would require us to reaffirm or overrule the long-standing

rule of this circuit which holds that upon a proper cautionary charge, accomplice testimony may be sufficient without corroboration to uphold a criminal conviction. *United States* v. *Haynes*, 403 F.2d 55 (6th Cir. 1968); *United States* v. *Callis*, 390 F.2d 606 (6th Cir. 1968); *Continental Baking* v. *United States*, 281 F.2d 137, 155 (6th Cir. 1960). Assuming this court has the right to change this long-standing rule (*see Caminetti* v. *United States*, 242 U.S. 470, 495 (1916)), we find no need to undertake this examination, however, since reading the trial record convinces us that there was more than ample corroboration of the testimony of the alleged accomplice and very substantial evidence to support both the Judge's denial of the motion for a directed verdict and the subsequent verdict of the jury.

The gross facts shown by the record on favorable view of the government's evidence (*Glasser* v. *United States*, 315 U.S. 60, 80 (1942); *United States* v. *Wolfenbarger*, 426 F.2d 992 (6th Cir. 1972)) include:

A federal prisoner named Johnny Pace escaped from the Metropolitan Jail in Nashville, Tennessee, on September 12, 1970, employing a gun to accomplish the escape. He had previously been convicted of robbing a bank at McEwen, Tennessee, on March 20, 1970. A Federal Reserve Bank manager identified the serial numbers of 40 $100 bills which had been shipped to the McEwen bank on January 2, 1970. A lawyer testified that on a visit to the jail to see one of Pace's cellmates, Pace had talked to him and that he subsequently called appellant Calvin Thomas and told him that Pace wanted him to bring him (Pace) some money. Other witnesses (including Pace's

wife) testified that Thomas had been a friend of Pace for 16 years and visited Pace at the jail and that Pace talked to him in sign language. A jail "trusty" named Holt then testified that he met an unidentified man at Pace's instructions and received three Pall Mall cigarette packages which he examined, finding hundred dollar bills in one and bills of lesser denominations in the others, and that he gave them to Pace. Still another "trusty" named Williams testified that at Pace's instructions he picked up a package left by appellant Calvin Thomas which consisted of a paper bag containing a plastic bag with a towel wrapped around some heavy object and that without examining it, he gave it to Pace and received in return five $100 bills. A female employee in the Police Records Bureau to whom Williams regularly brought lunches testified that Williams gave her five $100 bills to keep and deposit for him, but that she turned them over to a lieutenant of the Nashville Police Department and an FBI agent. The FBI agent testified that he received these bills and introduced them in evidence, noting that four of them had the same serial numbers as four of the $100 bills which had been shipped to the McEwen bank by the Nashville Federal Reserve Bank on January 2, 1970.

Calvin Thomas also testified. He admitted long friendship with Johnny Pace. He admitted three visits to see him in jail. He denied taking any money, any gun, or any package to Pace. His testimony was in direct contradiction on other relevant items to that of a number of witnesses. The jury had a right to believe him, but did not.

The judgment of the District Court is affirmed.

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
MAR 8 1972
MICHAEL RODAK, JR., CLERK

No. 71-959

In the Supreme Court of the United States

OCTOBER TERM, 1971

CALVIN THOMAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-959

CALVIN THOMAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Middle District of Tennessee, petitioner was convicted of having aided and abetted the jail break of a federal prisoner, in violation of 18 U.S.C. 752. He was sentenced to four years' imprisonment. The court of appeals affirmed (Pet. App. A).

Petitioner's sole contention is that this Court's decision in *Caminetti* v. *United States*, 242 U.S. 470, 495, holding the uncorroborated testimony of an accomplice sufficient to sustain convictions should be overruled. We rely upon the opinion below which demonstrates that the question is not presented since "there was more than ample corroboration of the testimony

459-662—72

of the alleged accomplice" (Pet. App. A 2), and that the evidence was clearly sufficient to support the verdict.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1972.

U.S. GOVERNMENT PRINTING OFFICE 1972